

F I L E D 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

OCT 14 2005

MARLON BOWEN,

CLERK'S OFFICE
U.S. DISTRICT COURT
EASTERN MICHIGAN

Petitioner,

CASE NO. 05-72754

E.

HON. LAWRENCE P. ZATKOFF

KENNETH ROMANOWSKI,

Respondent.

ORDER

This matter is before the Court for a determination as to whether a certificate of appealability should issue in this matter. "In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless" a certificate of appealability is issued under 28 U.S.C. § 2253(c). FED. R. APP. P. 22(b)(1). A certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In order to make such a substantial showing, a petitioner must show that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The Court must individually evaluate each issue raised by Petitioner, *see Murphy v. Ohio*, 263 F.3d 466, 467 (6th Cir. 2001), and shall specify the issue or issues upon which Petitioner has made a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(3). If the Court declines to issue a certificate of appealability, it must state why it is declining to issue one. *See* FED. R. APP. P. 22(b)(1).

Petitioner requests a certificate of appealability on the following three issues:

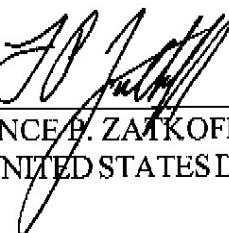
- I. The trial court should be required to resentence defendant under the new guidelines to the drug laws.
- II. Defendant should be resentenced under the guidelines because his present sentence violates his state and federal rights to be free from cruel and unusual punishment.
- III. The rule of lenity requires that defendant be resentenced under the guidelines.

The Court has reviewed each issue presented, as well as the supporting materials. For the reasons stated in the Court's August 2, 2005, Opinion and Order, Petitioner's request for a certificate of appealability is DENIED on each issue presented because Petitioner cannot make a substantial showing of a denial of a constitutional right on any issue. Accordingly, IT IS ORDERED that no certificate of appealability shall issue in this matter.

IT IS SO ORDERED.

OCT 14 2005

Dated: _____, 2005



LAWRENCE F. ZATKOFF
CHIEF UNITED STATES DISTRICT JUDGE

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